



The Supreme Court of South Carolina

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POST OFFICE BOX 11020
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1459

FAX MEMORANDUM/COVER SHEET

TO: Jocelyn Boyd

FAX NO.: 803-896-5246

FROM: Dan Shearouse

RE: Proposed Regulations Governing Representation before the
Commission. **Docket No. 2007-445-A**

DATE: September 8, 2008

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 4

MESSAGE: Attached is a copy of a letter from Chief Justice Toal to Chairman Fleming concerning the Commission's proposed regulations governing representation before the Commission. I have sent Chairman Fleming a copy of the letter, as well, via email and regular mail. Please let me know if you have any questions.

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The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

1231 GERSVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1584
FAX: (803) 734-1187

September 8, 2008

Chairman Elizabeth B. "Lib" Fleming
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Public Service Commission's Proposed Regulation 103-805
Docket Number 2007-445-A

SC PUBLIC SERVICE
COMMISSION

2008 SEP - 8 PM 3:30

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Dear Chairman Fleming:

The Public Service Commission submitted a letter to the Court on July 30, 2008, detailing proposed regulations concerning representation of parties before the Commission. I am writing to express some concern on behalf of the Court regarding the Commission's proposed regulations, specifically proposed Regulation 103-805(D), which provides the Commission may waive the requirement that "[a]ny entity other than an individual must be represented by an attorney authorized to practice law in South Carolina."

As you are well aware, this Court has the duty to regulate the practice of law in South Carolina and, accordingly, has the authority to define what constitutes the unauthorized practice of law. The Supreme Court's purpose in regulating the practice of law is to protect the public from the negative consequences of erroneously prepared legal documents or inaccurate legal advice given by persons untrained in the law. Pursuant to this Court's decision in In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992), state agencies, may, by regulation, authorize persons not licensed to practice law in South Carolina to appear and represent clients before that agency. Such regulations are presumptively valid and acts performed in compliance with the regulations are presumptively not the unauthorized practice of law. We recognized, however, that such an agency practice could be abused, and the Court reserved the authority to

declare unenforceable a regulation which results in injury to the public. To that end, state agencies are required to file a copy of any proposed regulations with this Court at the same time the proposed regulations are filed with Legislative Council.

After the Commission forwarded the proposed regulations to the Court, a member of the Court's Staff contacted the Docketing Department of the Commission and was informed the intent of the proposed change is to allow a business entity, specifically a small utility that may be struggling and is seeking a rate increase, to be represented by a non-lawyer before the Commission. The Staff member was also informed the Commission will only waive the requirement for a business entity, and it does not intend to waive the requirement for an individual appearing before the Commission. However, the proposed resolution does not state that only business entities are eligible for a waiver.

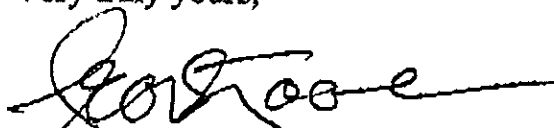
The Court is also concerned with the lack of specificity as to the criteria for obtaining a waiver. According to the proposal, the regulation may be waived if the waiver is "in the interest of justice and judicial economy," which is a somewhat vague standard. Moreover, there is no procedure within the proposed regulation concerning how a party before the Commission may apply for the waiver, nor are there any safeguards to ensure that party is aware of the risks of being represented by a non-lawyer.

By way of example, a business entity, such as a corporation, may be represented by a non-lawyer officer, agent, or employee in Magistrates Court. The Magistrates Court Rules provide such representation is undertaken at the business's option and with the understanding that the business assumes the risk of any problems incurred as the result of the representation. Rule 21, SCRMC. Moreover, the Magistrates Court requires a written authorization from the entity's president, chairperson, general partner, or chief executive officer before permitting such representation. The Court's concern with the proposed regulation in its current form is that it provides no assurances the entity understands the risks, and no objective guidelines or procedure to be used in determining whether it is in the interest of justice or judicial economy to grant the waiver.

Based on the above, the Court would ask that the Commission reconsider its proposal or consider amending the proposal to include some specific guidelines to assure the public and the parties appearing before the Commission are protected.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jean Hofer Toal